THE PROVINCIAL ADVISORY COMMITTEE

ON CHILD ABUSE

FINAL REPORT

ON THE REVIEW AND RECOMMENDATIONS

ON THE PROVINCIAL CHILD ABUSE REGISTRY

October, 1986

Winnipeg, Manitoba

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October, 1986

FINAL REPORT ON THE REVIEW AND RECOMMENDATIONS ON THE PROVINCIAL CHILD ABUSE REGISTRY

0.1 INTRODUCTION

In November, 1984 the Provincial Advisory Committee on Child Abuse was requested by the Director of Child and Family Services of the Department of Community Services to undertake a comprehensive review of the provincial Child Abuse Registry, in cooperation with the Office of the Ombudsman.

With the proclamation of the new Child and Family Services Act (March, 1986), the subsequent review of all regulations, forms and procedures, and the anticipated implementation of the Service Information System, it appeared both timely and appropriate that a full study of Manitoba's Child Abuse Registry be initiated.

The objectives of the review were defined as follows:

(i) to examine the current Child Abuse Registry in terms of its purpose, structure and operation;

(ii) to consider the major issues, shortcomings and/or problems and the reasons for them, in the operation of the Child Abuse Registry; and

(iii) to provide the Director of Child and Family Services with specific recommendations in regards to continuing, modifying or expanding the current Registry.

In undertaking the study, the Provincial Advisory Committee on Child Abuse in conjunction with the Provincial Program Coordinator on Child Abuse set up a special sub-committee. The initial phase focused on feedback from Child and Family Service agencies since they have "sole authorized access" to the existing Register. The second phase included circulating proposed recommendations to a much wider target group involving key disciplines and groups concerned with child abuse throughout the province. The second phase also involved seeking response both federally and inter-provincially.

This report summarizes the following areas:

(a) a descriptive outline of the status of the current Abuse Registry;

(b) the review process;

(c) the preliminary results;

(d) the interim recommendations; and

(e) the final recommendations.

In addition to focusing on the overall purpose, goals and underlying values and assumptions, the report puts forth an operational proposal which in effect would establish two separate, but related registries:

(i) a Child-Victim Registry; and

(ii) a Child-Abuser Registry.

Its recommendations deal with:

(a) where the registries should be located;

(b) what the reporting or registration process should be;

(c) how those being registered should be notified;

(d) what the appeal process should be;

(e) how long names should remain on the registry; and

(f) who should have access to the registry.

It provides a matrix which sets out criteria for registration following investigation and conferencing pursuant to the provincial guidelines based on the multi-disciplinary team approach to child abuse.

Within the broader context of child protection systems, the report's findings underline that the concept, philosophy and operation of the Registry offers an essential tool particularly to front-line social workers in the identification of vulnerable children at risk and their families. As part of a Service Information System, it provides one means of quality control and accountability in the continuing effort to ensure effective and efficient services to this high risk population. Although the registration is centralized, there has been a continuing thrust towards decentralization and regionalization of the service delivery system. In a province as diverse and varied in its population distribution and logistics as Manitoba, such efforts support and encourage resourcefulness, flexibility, innovation and relevance to culture, community and region.

This report acknowledges that Registries remain an important tool which is as "good as those who utilize it". The provision of effective intervention and treatment services will continue to depend on the expertise, the cooperation and collaboration of the members of multi-disciplinary teams.

Ongoing improvements to child and family service legislation, revisions to regulations, guidelines and professional protocols, and the regional development of child abuse teams must continue to underline a province-wide commitment to abused children and their families. As part of a comprehensive information system, the registry can:

(a) facilitate more effective case management;

(b) assist in assessment of danger to children;

(c) continue to encourage reporting of known and suspected child abuse; and

(d) provide a tool for improving accountability by monitoring follow-up reports.

The registry will continue to be an important source for needed program information. Limited, authorized access must continue to safeguard the confidentiality of its content while contributing to a fuller diagnostic and therapeutic evaluation. At the same time, solutions to inadequacies in services "must be found in better training, better supervision and the gradual recruitment of sufficiently qualified staff"[1]. In other words, improvements in the Child Abuse Registry cannot happen in isolation of broader system-wide changes, and will not compensate for inadequate resources.

0.11 Historical Overview

The need for such a review had grown as a direct result of the urgent responsibility to respond to the alarming increase of child abuse reports, proposed changes in legislation, agency structure and service delivery, and growing concern for finding a balance in protecting the rights of abused children and their families and in guarding civil liberties. In moving towards strengthening a child protection system which can effectively receive, store, monitor and analyze reports of known and suspected child abuse cases, the need for a new information management system utilizing computer-data processing has become apparent.

There are those who argue that criticism of Abuse Registries has largely resulted from a failure to understand its nature and function, fundamentally as an index of cases centrally reported. It should be noted that:

> "Without an index, or register, there would be no way of knowing whether a case was currently being handled by an agency without polling every member of the agency's staff each time a letter or referral arrived at the agency."[2]

Furthermore,

> "...no service agency could function without a master index. But there is reasonable dispute about how a register should be organized and operated, who should have access to it, what functions it should perform, and especially over whether it should be state-wide (province-wide) in scope."[3]

There has been growing recognition that the state of Child Abuse Registries is in flux. Recent studies (Besharov,[4] Ontario,[5] Badgley,[6] Library of Parliament,[7] and MACSOW[8]) have provided a range of recommendations from making existing registries more effective and responsive to having them abolished. It would appear that "...just as there is no 'best' way to offer child protection service neither is there one 'true' way to operate a central register".[9]

Within the context of the high public profile which has been given to child abuse, especially child sexual abuse, fears have been expressed that the registry might be listing unfounded, malicious or otherwise inappropriate reports. The potential danger of stigmatization has raised such questions as: what is being reported? by whom? to whom? when and under what conditions? what happens to these reports upon receipt? and who has access to them?

Throughout both the United States and Canada, support for registries has tended to be based on four specific goals: research; diagnosis and tracking; encouragement of reporting; and case management. There are, however, few evaluative reviews which have examined whether these goals are being achieved.

The first child abuse registers were established in North America in the mid-60s when the "battered baby syndrome"[10] first gained public prominence. Since then, registries have been set up in almost every jurisdiction in one form or another. Their initial emphasis was primarily diagnostic in assisting social workers, physicians and police in developing a more coordinated approach. Key functions included tracking mobile abusive families, data-collection and research.

In Manitoba, the provincial Child Abuse Registry was established in June, 1971 requiring that child caring agencies report all suspected cases of child abuse on prescribed form to the Director of Child Welfare. Within the past decade, it has grown from a small index dealing with less than 150 cases per annum to handling almost 700 reports and approximately 2000 entries, checks (cross-references), and responses, all of which has continued to be done "on-sight" in a "hands-on" manual system. The registry has always been safeguarded with the highest degree of confidentiality.

Some of the most typical questions raised about the Child Abuse Registry in Manitoba have been:

(a) how do people get on the registry?

(b) how are names recorded?

(c) is follow-up treatment recorded?

(d) who has access?

(e) are names removed?

(A) <u>How do people get on the registry</u>

(1) Under previous legislation, that is, Section 36(6) of the <u>Child Welfare Act</u> and pursuant to regulations (150/79) "<u>every child caring agency that</u> receives information about the alleged abuse of a child including a child in the care of the agency <u>shall report</u> the information <u>to the director</u> in a manner and form required by the director."

Therefore, the primary responsibility for reporting the child-victim, the child's family and the offender/perpetrator to the registry rested with the child caring agency. (These accounted virtually for all reports made to the director.)

(2) Within the context of the new guidelines on child abuse proclaimed in April, 1984 under guidelines (5), there was provision that "any other professional may and should report a child abuse incident in the same manner and form to the director .... " (These have accounted for less than 2% of all reports and are shown by agency-source in our statistics).

(3) Child caring agencies would report each confirmed case on a prescribed form (see Addendum #1) as soon as the preliminary investigation has been carried out. Reports were also made on "high risk" abuse cases especially where the agency had not been able to substantiate conclusively even with corroborative evidence, but where there was very serious concern (such situations usually were characterized by the denial of the offender(s) and the inability of the child-victim to be a creditable witness, that is, a pre-verbal child).

(B) How are names recorded

(1) Upon receipt of the attached form at the directorate, the names were recorded in a manual card-index by a designated clerical staff person according to:

(a) the child's name/report No.
given name(s) of child
birthdate
names of parents, guardians, foster parents (including aliases)
address
reporting source
date(s) of report(s) to registry

(b) the parents, guardians or foster parents/report No.
surname(s) (including aliases)
given names (male)
given names (female)
address

Although a separate card was not kept on those offenders outside the immediate family, Registry index allowed for cross-referencing such names.

(2) Each child abuse report was kept in a binder and chronologically recorded for quick reference. It was in effect an administrative record which:

(a) recorded only basic identifying information;

(b) allowed for quick manual access; and

(c) served to link an investigating agency directly with any previous child caring agency involved so that any further information can be exchanged on an agency-to-agency basis.

(C) Is follow-up treatment recorded

(1) There was a provision on the child abuse form to give some brief detail in regards to the nature and extent of the treatment and counselling which the child-victim and/or family pursue subsequent to the investigation of the suspected/alleged abuse. Such follow-up treatment might include individual, group and/or family therapy or a combination of all three.

(2) In addition, provincial guidelines provided for a regular review of all abused children reported to the director " .... to ensure the sound disposition of each case, the continuity of service and ultimately the safety of all abused children or child at risk anywhere in the province".

Such review was done on a case-by-case basis based on the information which was reported through the child abuse form.

(D) Who has access to the Child Abuse Registry

(1) At the present, normal internal access to the registry was restricted to the Director of Child and Family Support, the Provincial Coordinator of Child Abuse, the Winnipeg Coordinator of Child Abuse and one designated administrative staff person who manages the registry.

(2) External access to the registry was allowed only to designated and authorized child caring agency staff as follows:

(a) that there was either confirmation or denial of any previous record;

(b) if confirmed, then the nature and extent of previous trauma was identified in regards to a specific child-victim and/or the offender, and the previous reporting agency was identified for contact in regards to any further details which might be required for the purpose of carrying out a current investigation.

(3) The only exceptions to the above policy have been:

(a) inter-provincial requests or alerts either from the provincial coordinating officer/registrar or from a specific agency involved in an investigation.

(b) the police/law enforcement agency or the Attorney-General's Department might make a specific request for confirmation of a previous record in which case the same procedure as outlined above is followed.

(E) Are names removed from the registry

(1) Until the present, there was no formal policy statement dealing with the removal or expungment of names from the registry. It has been the intent of the directorate to view the registry more as a "record" of what child caring agencies have determined to be confirmed or high risk child abuse incidents.

(2) Agencies have, from time to time, requested that amendments, changes and/or additions be made to the registry form based on more current developments in a case. Usually, this would include details pertaining to agency disposition or to actions taken by the criminal justice system. There were few if any requests for removal of names. In any event, such requests would likely originate with a child caring agency since no one else had direct access to information pertaining to any specific case.

0.12 Changing Needs and Directions

The registry has been particularly important in helping social workers who were in the process of investigating child abuse allegations, checking for previous reports and disclosures. In April, 1984 the Manitoba Guidelines for Identifying and Reporting Child Abuse specified that:

> "5. Every child caring agency which receives information about the suspected or alleged abuse of a child, including a child in the care of the agency, shall report the information to the Director of Child and Family Services, as required by the Child Welfare Act (Manitoba) in the manner and form set out in the regulations.
>
> Notwithstanding the mandatory requirement for a child caring agency to report, any other professional may and should report a child abuse incident in the same manner and form to the Director of Child and Family Services.
>
> 6. The office of the Director of Child and Family Services shall issue statistical and descriptive data, as extracted from agency reports of suspected or alleged child abuse. A regular review of all abused children reported to the Director shall be required in the manner and form set out by the Director, to ensure the sound disposition of each case, the continuity of service and ultimately the safety of all abused children or children at risk anywhere in the Province.
>
> 7. Each child caring agency should inform the reporter of suspected or alleged abuse of action taken on the report at the earliest appropriate time."

Significant organizational changes in the Child and Family Service system including the emergence of Native Child and Family Service agencies on each reserve throughout the province, regionalization within the City of Winnipeg and the shift in service demand to meet increasing reports of child abuse appear to have emphasized such issues as:

(a) the need for easily accessible, centralized and coordinated structure to work with all Child and Family Service agencies in the province;

(b) the need for quick, easy linkage to current and accurate data; and

(c) the capacity to work with parallel systems especially with law enforcement, the hospital/medical and educational systems.

The issue of the potential threat to the privacy of the child and family has always been one which is regarded with the utmost seriousness, especially in terms of any improper disclosure which could stigmatize a child and/or his family. At the same time, the rights of children "in need of protection" have been given greater weight while maintaining a balance with the rights of parents/guardians. Any unauthorized release of information from the registry would be viewed as a serious breach of confidentiality with the previous and current legislative provisions.

As awareness of child abuse has grown, so have the requests for indirect access to the registry increased by such groups as the day care program, agency foster parent programs, probation services and Big Brothers organizations, all of whom are wanting to establish a "pre-screening" process for applicants more in terms of knowing whether someone has been on the registry than in terms of obtaining any specific information.

One of the most difficult aspects of investigations into child abuse has always been the issue of complete and accurate verification of the abuse. Almost all cases involve high degrees of denial coupled with 'blaming the victim' wherein the alleged offender is unwilling to assume his/her responsibility for the abuse. This is a particularly serious matter in cases involving pre-verbal children, victims of sexual abuse and disabled youngsters. The multi-disciplinary basis of our guidelines have grown out of the need to coordinate, consult and corroborate circumstancial evidence and to arrive at reasonable decisions which do protect children 'at risk'. The alternative has meant the danger of leaving a child at risk.

Although a general provision in the former Child Welfare Act made "non-reporting" a violation, there was no specific section dealing with this matter. In the new Child and Family Services Act (see Section 3.0), specific provisions recommending both legal action under the Act and disciplinary action through the appropriate professional body or organization have been included.

This province has consistently emphasized a therapeutic and remedial approach to child abuse. With the emergence of child sexual abuse it has been necessary to arrive at a compromise which combines both the therapeutic effort with the requirements of the criminal justice system.

1.0 BRIEF DISCUSSION OF THE REVIEW PROCESS AND METHODOLOGY

A Sub-Committee appointed by the Provincial Advisory Committee on Child Abuse assumed the primary responsibility for the design, the implementation and evaluation of a comprehensive review process. The review was set out in three phases:

(a) initial phase: the design and distribution of a questionnaire to all child and family service agencies in the province;

(b) second phase: the draft and circulation of the preliminary agency response to all key disciplines and groups concerned with changes to the registry; and

(c) final phase: the development of a final set of recommendations integrating both the agency and system's response.

1.1 Design and Distribution of Questionnaire

In considering various options, the choice of a questionnaire format appeared to offer the most pragmatic, inexpensive and manageable province-wide strategy for obtaining a direct response from all the child and family service agencies (previously referred to as child caring agencies) in the province. In addition to addressing the following key areas, the format included a "draft classification criteria for child abuse registrations" ranging from "highest to lowest risk" as a possible reference tool to facilitate more effective reporting to the Registry.

The questionnaire was set out as follows:

1. Assuming a central recording of, or reporting of, child abuse incidents continues:

   (a) What details need to be recorded centrally regarding abusers/ victims?

   (b) What type or degree of abuse should be recorded?

   (c) (Child Caring Agencies) - Does your agency have any internal policy or guidelines, formal or informal, to aid staff in decision making around what is to be reported? If so, please attach a copy along with any comments.

2. (a) What information or how much information about individual abusers or victims?

   (b) How long should it be maintained?

   (c) Your opinion as to why in both (a) and (b) above, would be appreciated.

3. (a) Who owns the registry?

   (b) Should a different name be used for this type of record?

4. (a) Do we need to notify persons registered as either abusers or victims, or both?

5. Should abusers and/or victims have access to the registry?

   (a) Does there need to be a right to appeal, leading to possible amendment or deletion of entire entry?

   (b) Would the right to add "additional" or "amending" information be sufficient?

6. (a) Who should be able to initiate a report to the registry?

   (b) Should potential referral agents have access to records to confirm both accuracy of their original referral, or to assist in decisions around a new referral?

7. Should Child Caring Agencies have a <u>right</u> to access of records of police investigations of suspected abuse, should there be a difference of opinion as to need for referral as an abuse case?

8. How useful has the existing registry been in cases known to you?

   (a) How many times did your agency consult the registry in calendar years 1983 and 1984 as part of ongoing investigations/assessments?

   (b) How many cases did your agency investigate/assess?

   (c) How many times did the registry confirm a previous report of abuse?

   (d) How relevant were these confirmations to your investigation/assessment? (If data is not readily available, your experiential perceptions would be helpful.)

9. Should victims, abusers and non-abusive parents/care givers all be clearly identifiable, or should any of these be highlighted, or in fact not identified at all? Why?

10. Is the very existence of a central registry now, or likely to be, viewed as a violation of the Charter of Rights?

11. (a) Where do we draw the line between abuse/not abuse?

    (b) What, if anything, do we not register?

    (c) Would a system of classification of degree of abuse, such as the follcwing be useful?

DRAFT CLASSIFICATION CRITERIA FOR CHILD ABUSE REGISTRATIONS: (Highest to lowest risk)

Physical Abuse:

(a) resulting in criminal conviction.
(b) leading to charges but no conviction.
(c) resulting in hospitalization due to trauma.
(d) requiring medical treatment but no hospitalization.
(e) injury not requiring medical treatment but objectively diagnosed as abuse (whether denied or acknowledged?).

Sexual Abuse:

(a) Criminal conviction on a sex related charge originating within family, or violation of position of trust.
(b) Criminal charges - but no conviction.
(c) No charges - but a medical diagnosis of sexual activity, involving family or person in position of trust (example, known sexually transmitted disease).
(d) Confirmed sexual abuse by at least a statement of child and supporting information such as professional opinion supporting the allegation.
(e) Suspected sexual abuse: no confirming or corroborative information (example, withdrawing statements and/or professional opinion does not support diagnosis of abuse). ("or refusal to have medical examination" - instead of a suggested alternative to the last part of this clause.)

These are working/draft criteria, and we recognize that there may be differences of opinion in respect to (d) and (e) in each set of classifications. Your ideas and opinions would be helpful.

12. What additional comments do you wish to make in regards to the current child abuse registry in the form of any further critique and improvement areas?

1.2 Agency Response

In response to the questionnaire which was sent out in January, 1985 to the twenty (20) child caring agencies including regional offices (all of which have statutory responsibility for provision of child welfare services in the province), a total of sixteen (16) replies came back (80%).

Generally, the responses reflected the agency position based on serious discussion with key staff in regards to the questions posed and the issues facing them. The results were compiled into an interim report format: "Agency Responses to Child Abuse Registry Questionnaire" March, 1985.

1.3 Phase II

(A) Draft and Circulation of Preliminary Results

On April 22nd, 1985, a further draft of the preliminary results was reviewed in detail by the Advisory Committee. Since there appeared to be considerable agreement with regards to the majority of responses from the agencies, the decision was taken that a summary of the review would be pulled together with a view to sharing the report at a system's level across the province.

The report provided a summary of the following key points:

(a) a statement of underlying values and assumptions;

(b) a statement of the proposed purpose of the Child Abuse Registry; and

(c) a set of operational recommendations.

It is noted that the preliminary phase had focused on input from all Child and Family Service agencies in the province. The response had been excellent. The intent of this second phase was aimed at circulating the results of the review to each agency, organization and discipline affected by the direction of these proposed recommendations.

In the context of a critique, the following questions were asked:

(1) Is there general agreement with the statements and the recommendations as outlined?

(2) Are there specific areas or points of disagreement? What were they?

(3) What changes, additions or recommendations would you (and your staff) make to ensure the most effective and efficient Child Abuse Registry possible?

(4) Any other comments which you wish to make (i.e. what you might anticipate the impact of the new Child and Family Services Act might have, the Charter of Rights, or very practical issues).

(B) System's Response

One hundred and thirty-two reports were sent out along with requests to each child abuse coordinator or its equivalent in each province and the National Clearinghouse on Family Violence in Ottawa, Ontario. There were a total of thirty-three formal responses (25%).

It should be noted that excellent feedback was received from the Provincial Ombudsman, Mr. Gordon Earle, from the Ontario Centre for Prevention of Child Abuse, and from the province of Nova Scotia. Mr. Earle, for instance, shared the experience and reports of the British Columbia Office of the Ombudsman raising similar issues and concerns.

The Ontario Centre raised key philosophical and operational points. Nova Scotia shared its most recent legislation, guidelines and procedures.

(C) An Analysis of the System's Response

The most significant area of response was in regard to the recommendations for the operational proposal dealing with the following areas:

(a) the child abuse registry;

(b) the registration process;

(c) the notification process;

(d) the appeal process;

(e) access to the Registry; and

(f) expungment.

(a) the Child Abuse Registry

Although the concept of a "child-victim registry" had been proposed, it became very clear that two registries were required:

(i) a child-victim registry, and

(ii) an abuser/offender registry.

Consistently, the response was that the Registry should contain both suspected and confirmed cases; including identifying information on the child/victim, the victim's family and the offender. Unfounded, frivolous and vexatious complaints should not be recorded. In other words, the registry should "not be cluttered with irrelevant information. This is vital for social workers who must access information quickly and efficiently."[11]

Other issues highlighted included:

(i) that the child's gender and relationship to the offender must be recorded;

(ii) that the registry must be current, accurate, and easily accessible;

(iii) that the severity, the pattern of incidents and history of violence should be recorded;

(iv) that computerization would contribute greatly to most manageable effectiveness;

(v) that tracking of mobile, serial abusers and/or abusing families is still an important concern;

(vi) that the quality of the Registry must be monitored closely by the Directorate; and

(vii) that the confidentiality of the Registry must be tightly controlled.

(b) the registration process

As noted above, there was clear support for having all suspected abusers registered, both in terms of having one central place for recording such names and for the protection of children being at risk. Emphasis was placed on providing agencies with clear definitions and procedures which requires complete information on reports, clarity in classification, and all abuse cases.

(c) the notification process

Perhaps one of the most striking responses was that notification be mandatory and not left to agency discretion. At the same time, there was clear acknowledgment that Child and Family Service agencies had the primary responsibility and accountability for notifying all parties concerned and for clearly recording its actions. Standardization, precise definitions and mechanisms were recommended. This was viewed as one of the most significant changes, one which would provide greater protection of human rights by persons knowing that their names are being placed on the registry.

(d) the appeal process

While offering clear support for an appeal process, the need to specify the process, the conditions under which appeal can take place, and ensuring equality were underlined. Further clarification would have to take place in regards to the roles of the Director of Child and Family Services under new legislation and the role of the Office of the Ombudsman along with the judicial system in terms of relative levels and expectations of each avenue of appeal.

(e) access to the registries

Much of the response seemed to focus on the issue of access in one way or another. Each party recorded on the registry should have access to that information pertaining to that individual. There appeared to be some uncertainty as to whether such access should be direct (seeing the actual information recorded) or indirect (receiving information which has been screened). It was noted that the Freedom of Information legislation might require access regardless of what our concerns might be. At the same time, the need for confidentiality, the danger of stigmatization, and the requirement for tight controls were emphasized.

There was some question as to what specific parties should have access especially when one is considering large family or sibling groups and the inherent danger in notifying everyone. Discretion must be spelled out.

Finally, there was increased support for a broadening of those who are "designated and authorized" to have access both to the registry and abuse information. While there was support for more access by medical child abuse units, there were concerns expressed around police access to such information. In part, this seemed to reflect the continuing lack of awareness and understanding of the nature and extent of mutual information sharing already taking place. Nevertheless, more access under specified conditions aimed at the protection of children was indicated, i.e., "twenty-four hour" access at a location central to all related systems, namely the Directorate.

(e) expungment

The readiness to expunge names from the registry was generally supported given reasonable time-limits relevant to the classification of the abuse report. Confirmed cases should be kept for longer, if not indefinite periods. While noting that people "do change" and have the potential for growth, there was clearly some uncertainty around what should happen to confirmed and suspected sexual abuse offenders where the prognosis has been less positive. What does "successfully being treated" mean and by whose standards? Expungment of child-victims should take place at the time they reach their age of majority.

1.4 Concluding Comments

The comment which appears to capture the overall spirit and intent of the responses was, that, whatever recommendations are finally accepted, they must be in the context of maintaining that "...delicate balance between protecting children's rights and protecting civil rights".[12]

Within the broader scope of the registry's purpose and goals, there was some question raised as to "the feasibility of using the register as a vehicle for case management" unless the data provided is "complete, comprehensive and timely" based on "high cooperation and mutual respect ... between service providers and registry officials".

In addition, more thought should be given to using the registry for tracking and research with clearer emphasis on "unit of analysis, cross-referencing, types of data required, data accuracy, completeness, timeliness, and associated management issues concerning the 'what', 'when', 'how' and 'who'. Feasibility issues and options should be identified."[13]

To date, the Ontario response noted that "...no jurisdiction in North America and the U.K. has successfully designed a child abuse register for accountability assessment"[14]. Greater accountability at the middle-management level was emphasized through program supervisors.

The problem of integrating past and present data in both linear and sequential terms was noted as something which could be overcome by good programming and provision of qualified personnel to handle a computerized register system.

Finally, a note of caution was raised in that our efforts should aim at developing a workable child abuse registry system within our capacity to handle; that there must be an assessment of the feasibility of the data complexity, data sources, the quality of data, data management requirements and the utilization of that data.

2.0 SUMMARY OF FINAL RECOMMENDATIONS

The Provincial Advisory Committee on Child Abuse in having completed a comprehensive review of the Child Abuse Registry and in addressing its purpose, structure and operation and the major issues and obstacles pertaining to its operation, makes the following recommendations to the Director of Child and Family Services.

These recommendations have been set out by defining an overall "conceptual" framework and basis for the Child Abuse Registry along with key "operational" considerations. Within the overall proposal, the definition, purpose, goals and underlying values and assumptions have been articulated as the foundations for structure and operation. In the operational proposal, the registries, locus of administration, registration, appeal, duration, access and expungment procedures have been addressed along with setting out criteria for registration.

2.1 Overall Proposal

2.11 Definition: The Child Abuse Registry is a confidential, province-wide, centralized, index or directory of suspected and/or confirmed cases of child abuse under the categories:

(1) Child-Victim Registry, and/or

(2) Child-Abuser Registry.

2.12 Purpose: The primary purpose of the Registry is to supplement and facilitate inter-disciplinary services of child and family services, medical, and police personnel in their common goal of protecting children and in particular victims of child abuse.

2.13 Goals:

1. To provide an alert as to potential, or increased probability of abuse in current investigations.

2. To provide inter-agency referral regarding current investigations.

3. To provide a screening mechanism to protect against known child abusers becoming employed in positions of trust regarding children.

4. To alert the Directorate as to service delivery problems.

2.14 Underlying Values and Assumptions:

(1) The existence of the Child Abuse Registry underlines the high priority placed on sound protective intervention, treatment and prevention of child abuse.

(2) That if the Registry:

. Is specific and clear as to its purpose and goals,

. Has clear guidelines as to its use,

. Has safeguards to ensure its use,

. Has reasonable protection of the rights of adults,

. Claims to do only that which is essential and does all that it claims,

It will be used consistently and its consistent use will facilitate effective services.

(3) The Registry is "only a tool in the battle" against child abuse and as such has certain limitations, namely:

(a) Because it cannot meet all needs it contains only basic information requirements and is in fact an index only;

(b) It can disclose only that a name is or is not registered along with cross referencing - it is not proof that an individual being investigated is the individual named;

(c) It contains only names known to be connected to previous incidents of child abuse; and

(d) It cannot actively track individuals at the present on a significant basis.

Therefore, its principal value is in serving as an alert to previous involvement and indicating the relevant service agency(ies) from whom appropriate information is available.

(4) That the Registry itself will contain limited data usable for extensive research. Additional (non-identifying) data will be retained elsewhere for research and program development purposes.

(5) There will continue to be some gaps in the Registry, specifically:

(a) It will not soon be part of a national or inter-provincial registry.

(b) Some clearly identifiable abuser's names may have to be purged.

(c) Some abuse cases will not be registered because:
(i) there may not be sufficient evidence or information
(ii) those registered may appeal successfully.

(6) The existence of the Registry acknowledges that certain individuals will continue to be a threat to children.

(7) Rights of the child abuse victims are protected under the Child and Family Services Act (Manitoba).

(8) Parents/guardians have rights which must be respected.

(9) Child-abusers have rights which must be respected.

(10) Families are not likely to be so mobile as to become involved in a second abuse in a different jurisdiction, before the first investigation has been completed, therefore, accuracy is more relevant than speed in registering cases.

(11) That there is seldom a situation of such urgency, and dependency upon the Registry so specific and complete, that a child would be needlessly left in, or returned to, a "situation of risk" if the Registry were not checked. If the signs or indications are present, a child can be kept in hospital under observation or apprehended by a child and family service agency. Therefore, the Registry does not need to be accessible 24 hours per day, 365 days per year.

(12) The primary responsibility for the co-ordination of services to abused children and their families rests with the Child and Family Support Directorate and agencies. Therefore, in the best interests of maximum confidentiality and optimal accountability, actual input into and access to information in the Registry will be through the Child and Family Service agencies, except that proposed employment checks may be submitted in writing directly to the Director.

2.20 The Operational Proposal

2.21 Definitions

(1) Child Abuse Registry - is a confidential, province-wide, centralized, index or directory of suspected and/or confirmed cases of child abuse registered under the categories:

(1) Child-Victim Registry, and/or

(2) Child-Abuser Registry.

(2) Child Abuse -- As in Sec. 1, Child and Family Services Act

"Abuse" is an act or omission by a parent, guardian or a person in whose care a child is which results in:

(i) physical injury to the child

(ii) emotional disability of a permanent nature in the child or is likely to result in such a disability or

(iii) sexual exploitation of the child with or without the child's consent".

For purposes of the Child Abuse Registry, "third party assaults" are also included. (See Addendum #2)

(3) Child-Victim Registry includes:

(A) Confirmed Case of Child Abuse - one of:

(a) Physical - a definite medical diagnosis of child abuse (non-accidental trauma);
- in the absence of an opinion by a medical practitioner, a statement by a witness of the abuse incident; or
- abuse acknowledged by the individual abuser.

(b) Sexual - a definite medical diagnosis that injury, condition or disease could only be the result of sexual exploitation; and/or
- abuse acknowledged by an individual.

(c) Emotional- a psychiatrist's or clinical psychologist's diagnosis.

(B) Suspected Case of Child Abuse:

(a) Physical - medical opinion is strong but less than definite diagnosis.

- medical "suspicion", is reinforced by agency and police investigations which also indicate high probability but less than conclusive evidence.

(b) Sexual - medical opinion is strong but less than definite.

- child is old enough to communicate regarding acts of sexual exploitation but insufficient evidence for criminal court.

(c) Emotional- if psychiatric or clinical psychologist is unable to determine "emotional abuse", it cannot be registered as "suspected".

(4) Child-Abuser Registry includes:

(A) Confirmed Abuser

(a) physical and sexual abuse

- certificate of conviction (or)

- admission of responsibility including those persons who admit to any member of the multi-disciplinary team but for whom criminal proceedings against are not successful for any reason, for example, this would include a person who admits to a social worker/teacher/doctor/police officer/nurse or any other person in a position of trust who is able to document and if necessary testify as to the content of the admission.

(b) emotional abuse

- admission of responsibility in any documented format including significant facts in various assessment documentation of child and family service agencies.

(B) Suspected Abuser (sexual abuse only)
(or) Suspected Sexual Abuser

- Any person against whom a criminal charge has been laid on the basis of the statement(s) of victim(s) although a conviction may not be obtained. The Court states in its remarks the belief the person was or was likely responsible for the abuse.

- Any person who on the balance of probabilities, and in the opinion of the majority of a multi-disciplinary team, is likely to have been responsible for the sexual abuse of a child. (e.g. An adult infected with a sexually transmitted disease known to have had access to a child also with a sexually transmitted disease of the same type.)

2.22 Operational Recommendations

The following detailed operational proposal is recommended:

(1) That the Provincial Child Abuse Registry become two (2) indexes or directories

(A) Child-Victim Registry, and

(B) Child-Abuser Registry (with two sub-categories)

(i) admitted/convicted physical, sexual or emotional abuser
(ii) suspected sexual abuser

(2) That the Child-Victim Registry would include:

(A) All confirmed physical, sexual and emotional abuse cases as defined above [Definition 2.21(3)].

(B) All suspected cases of physical and/or sexual abuse as defined above [Definition 2.21(3)].
(Proposed Registration Form - Addendum #2).

(3) That the The Child-Abuser Registry would include:

(A) All confirmed (convicted/admitted) abusers will be registered in all categories [Definition 2.21(4)].

(B) All suspected sexual abusers will be registered based on definition 2.21(4) using registration form (Addendum #3).

NOTE: The category of "Charged" could be included inasmuch as some persons are charged but not convicted. If a person was subsequently convicted, the status of alleged abuser would be changed to convicted for those who are not found guilty upon being charged, and who have, in fact, "admitted", it would in theory at least be possible to convert them to an admitted category. Some of these cases could be converted to "suspected sexual abuser" [Definition 2.21(4)].

This is a difficult area which will require careful management and decision making. This is left in only because there is a significant amount of impetus in the child caring professions for a broad range of registration of abusers.

2.23 Locus of Administration:

The Child Abuse Registry is to be located in the offices of the Director of Child and Family Services.

2.24 Registration/Reporting to the Registry

(1) All cases upon investigation and conferencing which are confirmed or suspected child abuse [2.21(3) and 2.21(4)] are to be submitted for registration by the Child and Family Services agency involved. The Child and Family Services agency will submit, following the completion of investigations by the medical, child & family services and police team, or upon concurrence by all parties concerned, that there is either confirmed or suspected abuse. In any event, all cases must be registered within 30 days following first referral to the Child and Family Services agency.

(2) In "third party assault" investigations, Child and Family Services may not be involved therefore the police may submit for registration through their Child and Family Services agency the information required for the Abuser's Registry, as either confirmed or convicted [Definition 2.21(4)].

Responsibility falls to the originating Child and Family Services agency to amend the registration where conviction has taken place.

(3) In investigations of emotional abuse, the police are generally not included and therefore, may not be involved in decisions regarding registration of emotional abuse in the Registry.

2.25 Notification Process

(1) The parent(s)/guardian(s) of the child confirmed or suspected to have been abused shall be notified in writing by registered mail by the reporting Child and Family Services agency as to:
(a) the fact of the registration;
(b) the contents of the registration under their own names;
(c) their rights to access and appeal; and
(d) duration of registration.

(2) The confirmed and suspected abusers are to be notified in writing by the reporting Child and Family Services agency as to:
(a) the fact of the registration under his or her name;
(b) the content of the registration;
(c) his or her right to confirmation as to the content of the registration; and
(d) duration of the registration and the right to appeal.

(3) Since the child victim is registered only as a victim, his parent(s)/guardian(s) have been notified and since his or her registration will be expunged automatically, there is no reason to notify the child of registration. The Child and Family Services agency may notify a child who is 12 or over of the registration.

Exception - the child victim of abuse within the family with younger siblings still at home, is to be notified upon his or her reaching the age of majority that his/her name will remain on the registry until the youngest sibling has reached the age of majority.

2.26 Duration of Registration

(1) Child-Victim Registry

a) Confirmed (within the family) - remains until the youngest of the siblings of the child-victim reaches age of majority.
b) Confirmed (outside the family) remains until child-victim reaches age of majority.
c) Suspected case (within the family) - remains until youngest of the siblings reaches age of majority unless successfully appealed sooner.
d) Suspected case (outside the family) - remains until child-victim reaches age of majority unless successfully appealed sooner.

(2) Child-Abuser Registry

a) Confirmed/within the family - indefinitely
b) Confirmed/outside the family - indefinitely
c) Confirmed/third party assault - indefinitely
d) Suspected sexual abuser: indefinitely unless successfully appealed.

NOTE: There appears to be a general consensus of opinion amongst persons concerned with the well-being of children and considerable public support for the registration of suspected as well as confirmed sexual abusers.

It is recognized that at least some suspected sexual abusers will appeal registration. However, since this will involve a civil process, with outcomes based on the balance of probabilities, it would appear to be defensible based on definition (2.21(4)].

2.27 Appeal Process

(1) Child-Victim Registry

Confirmed cases: there should be no appeal from the registration of confirmed cases of child abuse involving child victims, inasmuch as the registry is a record of the operation of Child and Family Services.

Suspected cases: the appeal procedure recommended below would follow.

(2) Parent/Guardian of Child-Victim

In cases of intra-familial child abuse, details with respect to parent/guardian of the child-victim will be contained on the Child-Victim Registry and, therefore, subject to the same conditions as noted above. In cases outside the family or extra-familial, that is, in those cases where abuse is known to have been perpetrated by someone from outside the family, registration will take place only on the Child-Victim Registry.

(3) Child-Abuser Registry

(a) Confirmed (Admitted/Convicted) Child-Abuser Registry (physical/sexual/emotional)

Those persons who were either convicted or admitted to the child abuse would be registered. Any appeal of the registration involving an abuser would follow the appeal procedure as outlined. Since only those persons who were either convicted of an offense involving child abuse or admitted to the abuse will be registered in this category, it will be very difficult for a person's name to be removed from the registry. However, those persons who in due

course receive a pardon for example, may want to request the expungement of their name. In addition, some persons who have undertaken and completed a treatment process may also apply for expungement of their name. It is recommended that each case be dealt with on its own merits. This is particularly true with regard to sexual abusers as there is considerable doubt as to the effectiveness of treatment programs at the present time.

(b) Suspected Sexual Abuser Registry

There is considerable support for the inclusion of suspected sexual abusers in the registry. Given a process of inclusion that involves reasonable documentation and evidence and at least the balance of probabilities, then the appeal process should be via civil litigation.

(4) Criteria Regarding Appeal to the Director of Child and Family Services

(a) Inasmuch as the Child Abuse Registry is a mandatory part of the record keeping of the Director of Child and Family Services and child and family service agencies, the contents of this record should be first appealable to the persons responsible for the administration of the records. Therefore, the following appeal procedure is recommended.

All appeals, whether they be appeals by abusers or victims or family members as to the inclusion of their name in the registry of child abuse, would be directed in the following sequence:

1. to the Director of Child and Family Services
2. the Ombudsman
3. Court of Queen's Bench
4. Court of Appeal

It is recognized that all persons may not wish to follow the above appeal process and that some persons may wish to access their right of initiating appeals at particularly the level 3, Court of Queen's Bench, by way of an originating Notice of Motion.

(b) In responding to a formal appeal process, it is recommended that the following areas, in particular, be subject to review.

a) Child-Victim Registry

i) Physical - review of medical evidence by a medical child abuse expert not involved in case previously.

If diagnosis of child abuse confirmed or considered probable, deny the appeal.

If diagnosis refuted, delete the registration and advise the appellant.

ii) Sexual - review of medical, social and police reports by appropriate experts. If diagnosis of sexual abuse confirmed or considered probable, deny the appeal. A panel of review, where required, shall be appointed by the Director of Child and Family Services.

If diagnosis is refuted delete the registration and advise the appellant.

iii) Emotional - review of psychiatric or psychological diagnosis. Conduct a new assessment by equally recognized expert.

If diagnosis is confirmed or considered probable, deny the appeal.

If diagnosis is refuted delete the registration and advise the appellant.

b) Child-Abuser Registry

i) Confirmed Child-Abuser Registry

Only convicted or admitted individuals are registered on this part of the registry. Child protection through employment screening is a major purpose of this registry. The registering of those individuals who are convicted or admitted would mean likely very few appeals. The criteria for removal of an abuser should be case specific and depend upon such factors as pardons, successful and demonstrated completion of appropriate treatment programs.

ii) Suspected Sexual Abuser Registry

The Director should confine his/her actions to reviewing the acceptability of the original inclusion process and supporting documentation. Unless the matter is clearly indefensible in civil litigation (balance of probabilities) any appeal should generally be denied. However, the Director will have the option to expunge a registration if there is reasonable evidence that indicates a mistake in the original registration.

2.30 Access to Registry

It is recommended that:

(1) Access By Authorized Directorate Staff

(a) Access to Registry is to be only by "hands on" entry by personnel authorized by the Director of Child and Family Services.

(b) The Registry itself is autonomous in relation to other computer programs which the department, government, or any other organization may operate.

(2) Access For The Purpose of Investigation

(a) A Child and Family Services agency, as part of any investigation, will be advised as to previous registrations of individuals and families upon appropriate identification.

(3) Access For Employment Screening

(a) Employment checks - employers and others in positions of responsibility regarding certain occupational/vocational groupings/such as teachers, day care personnel, residential care, social workers, foster parents, recreational personnel, volunteers, and others in which adults are in positions of trust regarding children, may receive clearance checks from the Child Abuse Registry. This would require submission of a "Release of Information regarding Child Abuse" signed by the applicant. (Addendum #4)

(b) The Directorate will conduct a search first of the Child-Abuser Registry. A confirmed finding in the abuser registry would be shared in a simple 'yes' or 'no' response.

A non-confirmed finding in the convicted/admitted abuser registry will lead to a search of the Child-Victim registry. A confirmed finding in this registry will result in the Directorate referring the prospective employer and the prospective employee to the (Executive) Director of the originating agency of the report. It will then be the responsibility of the agency, the prospective employee and the prospective employer to consult and ascertain if there was any reason that a person would not be recommended for a position of trust with the children.

This will permit an opportunity for the person, who although not convicted or admitted as an abuser, but who has been part of an abusive network, to confront whatever information may be available which indicates they are of some risk to the well-being of children.

A Child and Family Services agency will inform a prospective employer only that a specific person is registered in those instances where registered as a confirmed abuser.

(c) In the event an individual is cited as having been named in the Child Abuse Registry and she/he wishes to challenge this as a case of mistaken identity, every effort is to be made by the Directorate and Child and Family Services agency of registration to clarify the matter without delay. If those efforts are unsuccessful the registered individual would have a right to inspect information pertaining to that person of the registration and a right to appeal. If the initial efforts do confirm that there has been a case of mistaken identity, the clarification is to be recorded on the registration.

(4) Access by Those Named

Information on the Registry is confidential.

Access to the Provincial Child Abuse Registry is subject to the provisions of the Child and Family Services Act governing the confidentiality of all records and reports. Within the parameters of the Act and its prescribed regulations and guidelines, it is recommended that:

(a) Child-Victim

a. Child Victims have no right to inspect that information on the Registry except where a victim may request and is entitled to receive confirmation that she/he is registered.

b. Upon reaching the age of majority, the child victim may request and receive confirmation and clarification as to the registration's continuance or expungement as the case may be.

(b) Parents/Guardians of Child Victim

Parents/guardians as registered persons of the child-victim have a right to inspect that information in the Child-Victim Registry pertaining to themselves. In other words, a registered person may inspect information in the Register that pertains to himself/herself but no other information.

2.31 Expungement

(1) Admitted/Convicted Child-Abuser Registry

Any appeal of registration involving an admitted/convicted child abuser will follow the above-noted appeal procedure. It is only those persons who are either convicted of an offence involving child abuse or admitted to the abuse will have been registered, it will be very difficult for the name of a person to be removed from the registry. However, a person who in due course receives a pardon, may request the expungement of his/her name by the Director. Some persons who have undertaken and completed long-term treatment may wish to apply for expungement. In such instances, each case will be dealt with by the Director on its own merits.

(2) Child-Abuser Registry

The name recorded in the register will be retained for a minimum period until the child victim reaches the age of majority unless the Director has ordered the name expunged. Names recorded on the former registry will be expunged if there has been no access to them for 18 years following the year of registration.

In regards to the proper notification and communication of findings from investigations of abuse, section 19(3) of the Child and Family Services Act states:

"Upon completion of an investigation with respect to the abuse of a child, the agency shall advise the parent or guardian of the child and may advise

a) the person who provided the information respecting the abuse;
b) any person identified during the investigation as a person alleged to be subjecting the child to abuse; and
c) the child, if in the opinion of the Agency the child is capable of understanding the information and it is in the best interest of the child;

as to the findings and conclusions of the investigation."

Therefore, any person who receives notification that he/she is identifiable from the registry or register may inspect the information and request the Director to expunge his/her name altogether or to otherwise amend the identifying information. This includes persons named on the registry or register as allegedly permitting abuse, and children named as abused children where the alleged abuser is not known. In the latter case,

the parents or guardians of the child may inspect information pertaining only to themselves and request removal or amendment of the information.

Access to records are subject to the provisions under Part VI of the Child and Family Services Act dealing with confidentiality. Any person who receives proper notification that she/he is identifiable from the registry or register may inspect the information and request the Director to expunge that name altogether or to otherwise amend the identifying information. This includes persons named on the registry or register as allegedly permitting abuse, and children named as abused children where the alleged abuser is not known. In the latter case, the parents or guardians of the child may request removal or amendment of the information.

The Director will not expunge a name from the registry or register unless there are reasonable grounds to believe that the information is in error or should not be recorded. Normally, a name will be expunged when a Child and Family Service agency has advised that after further investigation it believes the case is not one of reportable abuse.

When the Director receives a request to expunge a registered person's name or to otherwise amend the registry or register, the Director or his delegate shall undertake a review before refusing the request. Such a review will be subject to the investigation and verification of the alleged abuse having been completed and having any serious doubts or questions concerning the registration examined by the Agency and the Directorate.

It is noted that any person making a report is protected under Section 18(4) of the Child and Family Services Act: "No action lies against a person for providing information in good faith and in compliance with subsection 1."

2.32 SUMMARY OF CRITERIA FOR REGISTRATION FOLLOWING INVESTIGATIONS AND CONFERENCING

TYPE	CHILD-VICTIM REGISTRY	ABUSER REGISTRY
Physical Confirmed Certain	Definite medical diagnosis	Convicted/Admitted
Suspected	A definite medical diagnosis; Child and Family Services/ police support; 2/3 of multi-disciplinary team clearly suspicious	No Registration
Sexual Confirmed	Medical diagnosis as to injury, condition or disease; Medical/Child and Family Services/Police investigations leave no doubt	Convicted/Admitted
Suspected	Register upon 2/3 of multi-disciplinary team clearly suspicious	Suspected sexual abusers registered on "balance of probabilities" criteria in both confirmed and suspected cases.
Emotional Confirmed Certain	Psychiatric and/or Psychological definite diagnosis	Admitted
Suspected	No Registration	No Registration

2.40 The Registry Within the Broader Context of Child Abuse Services

Within the broader continuum of children "in need of protection", the Registry offers an essential tool for supporting the identification of vulnerable children at risk and their families. In the continuing effort to ensure effective and efficient provision of services it provides one means of quality control. Although monitoring is centralized, the service delivery system is decentralized, thereby encouraging resourcefulness, flexibility, innovation and relevance as to culture, community and region.

While the Registry is an important tool, the provision of effective intervention and treatment will continue to depend on the co-operation, collaboration and expertise of the members of the multi-disciplinary teams. Although the multi-disciplinary teams endeavour to develop plans by consensus, each team member must act within the mandate and authority of his or her own organization and/or discipline.

3.0 Legislative Requirements

3.1 Definitions.

1 In this Act

"abuse" means an act or omission by a parent, guardian or a person in whose care a child is which results in

(i) physical injury to the child,

(ii) emotional disability of a permanent nature in the child or is likely to result in such a disability, or

(iii) sexual exploitation of the child with or without the child's consent;

"agency" means

(i) a child and family services agency incorporated under this Act,

(ii) a regional office of the department of the executive government of the province of which the minister charged with the administration of this Act is the chief administrative officer, and

(iii) a corporation created pursuant to an agreement under subsection 6(14);

"child" means a person under the age of majority;

"court" means

(i) in Parts III and VI the Family Division of the Court of Queen's Bench or the Provincial Court, and

(ii) in Part V, the Court of Queen's Bench, and

(iii) in Part VII, the Court of Queen's Bench, or the Provincial Court;

"director" means the Director of Child and Family Services appointed under this Act;

"family" means a child's parent, step-parent, siblings, grandparent, aunt, uncle, cousin, guardian, person in loco parentis to a child and a spouse of any of those persons;

"foster home" means a home other than the home of the parent or guardian of a child, in which the child is placed by an agency for care and supervision but not for the purpose of adoption;

"group home" means a home where not less than 4 or more than 8 children are placed by an agency for full time care and supervision;

"guardian" means a person other than a parent of a child who has been appointed guardian of the person of the child by a court of competent jurisdiction;

"master" means a master or referee of the Court of Queen's Bench;

"minister" means the member of the executive council charged by the Lieutenant Governor in Council with the administration of this Act;

"parent" means a biological or adoptive parent of a child and includes a person declared to be the parent of a child under Part II of The Family Maintenance Act;

"place of safety" means any place used for the emergency temporary care and protection of a child as may be required under this Act and includes treatment centres;

"prescribed" means prescribed by regulation;

"treatment centre" means any place established or designated by the minister primarily for the care and treatment of more than 8 children and includes facilities operated by any government department for those purposes but does not include facilities for the reception and temporary detention of a child;

"ward" means a child of whom the director or an agency is the guardian.

S.M. 1985-86, c. 8, s. 1.

3.2

PART III

CHILD PROTECTION

Child in need of protection.

17 In this Act, a child in need of protection includes a child

(a) without adequate care, supervision or control;

(b) in the care of a person

(i) who is unable or unwilling to provide adequate care, supervision or control of the child, or

(ii) whose conduct endangers or may endanger the life, health, or emotional well-being of the child, or

(iii) who neglects or refuses to provide or obtain proper medical, surgical or other remedial care or treatment necessary for the health or well-being of the child or refuses to permit such care or treatment to be supplied to the child when it is recommended by a duly qualified medical practitioner;

(c) who is abused or is in danger of abuse;

(d) who is beyond the control of the person caring for him or her;

(e) who by his or her behaviour, condition, environment, or association is likely to injure himself, herself or others;

(f) who refuses or is unable to provide adequately for the health needs of herself or her child;

(g) who, being under the age of 12 years, has been left unattended and without reasonable provision having been made for his or her supervision and safety; or

(h) who is the subject of activities in violation of section 63 or section 84.

S.M. 1985-86, c. 8, s. 17.

Reporting a child in need of protection.

18(1) Any person who has information that a child may be in need of protection shall forthwith report the information to the director or an agency and any person who fails to do so commits an offence punishable on summary conviction.

Duty to report.

18(2) Notwithstanding the provisions of any other Act, subsection (1) applies even where the person has acquired the information through the discharge of professional duties or within a confidential relationship, but nothing in this subsection abrogates any privilege that may exist because of the relationship between a solicitor and the solicitor's client.

Further consequences of non-reporting.

18(3) Where there are reasonable grounds to believe that any person who in the course of professional or official duties had reason to suspect that a child may be in need of protection and failed to comply with subsection (1), the director may report the matter to any professional society, association or other organization authorized under the laws of the province to regulate the professional activities of the person, and that professional society, association or organization shall cause an investigation to be made into the matter.

Protection of informant.

18(4) No action lies against a person for providing information in good faith and in compliance with subsection (1).

Identity not revealed.

18(5) Any person who reveals to the family of the child except in the course of judicial proceedings the identity of a person who has given information under subsection (1) without that person's written consent commits an offence punishable on summary conviction.

Interference and harassment is an offence.

18(6) Any person who interferes with or harasses any person as a result of that person providing information in compliance with subsection (1) commits an offence punishable on summary conviction.

S.M. 1985-86, c. 8, s. 18.

Agency to investigate.

19(1) Where an agency receives a report or information that causes it to suspect that a child may be in need of protection, the agency shall immediately investigate and shall take such steps as are prescribed and as it considers necessary to protect the child.

Report of abuse.

19(2) An agency shall report any information respecting suspected abuse of a child to the director who shall maintain a register for recording the information.

Communication of findings from investigation of abuse.

19(3) Upon completion of an investigation with respect to the abuse of a child, the agency shall advise the parent or guardian of the child and may advise

(a) the person who provided the information respecting the abuse;

(b) any person identified during the investigation as a person alleged to be subjecting the child to abuse; and

(c) the child, if in the opinion of the agency the child is capable of understanding the information and it is in the best interests of the child;

as to the findings and conclusions of the investigation.

Director to provide information re register.

19(4) The director shall provide to any person who applies information contained on the register under subsection (2) respecting that person other than information which might identify the person who provided the information leading to the investigation.

S.M. 1985-86, c. 8, s. 19.

Application for an order not to contact child.

20(1) Where an agency has reasonable and probable grounds to believe that a person has subjected a child to abuse or is likely to subject a child to abuse, it may apply to court for an order that the person

(a) cease to reside in the same premises in which a child resides;

(b) refrain from any contact or association with a child.

Notice of application.

20(2) The agency shall give 7 clear days notice of the hearing on a prescribed form to

(a) the parents or guardian of the child;

(b) any adult residing in the same premises as the child;

(c) the person against whom the order is sought; and

(d) the child where the child is 12 years of age or more.

Order.

20(3) Upon completion of the hearing, a judge, if satisfied that the person against whom the order is sought has subjected the child to abuse or is likely to subject the child to abuse, may grant the order with such conditions as the judge considers appropriate for a period not to exceed 6 months.

Extension of order.

20(4) On application at any time by an agency, a judge may extend the order under subsection (3) for further periods each of which shall not exceed 6 months.

Consent orders.

20(5) Where all the parties consent, a judge or master may, without receiving further evidence, make an order under subsection (3) or (4).

Agency to serve copies of order.

20(6) The agency shall cause a true copy of the order to be served upon all persons served with notice of the application.

Offence.

20(7) Any person who violates the provisions of an order made under this section commits an offence punishable on summary conviction.

S.M. 1985, c. 8, s. 20.

Apprehension of a child in need of protection.

21(1) The director, a representative of an agency or a peace officer who on reasonable and probable grounds believes that a child is in need of protection, may apprehend the child without a warrant and take the child to a place of safety where the child may be detained for examination and temporary care and be dealt with in accordance with the provisions of this Part.

Entry without warrant in certain cases.

21(2) The director, a representative of an agency or a peace officer who on reasonable and probable grounds believes

(a) that a child is in immediate danger; or

(b) that a child who is unable to look after and care for himself or herself has been left without any responsible person to care for him or her;

may, without warrant and by force if necessary, enter any premises to investigate the matter and if the child appears to be in need of protection shall

(c) apprehend the child and take the child to a place of safety; or

(d) take such other steps as are necessary to protect the child.

Child mistreatment an offence.

47(1) Any person having the care, custody, control or charge of a child who abuses or neglects the child or fails to protect the child commits an offence punishable on summary conviction.

Child under 12 not to be left unattended.

47(2) Any person having the care, custody, control or charge of a child under the age of 12 years who leaves the child unattended for an unreasonable time without making reasonable provision for the supervision and safety of the child commits an offence punishable on summary conviction.

S.M. 1985-86, c. 8, s. 47.

3.3 Manitoba Regulations

MANITOBA

MANITOBA REGULATION 60/86

BEING A REGULATION UNDER THE CHILD AND FAMILY SERVICES ACT RESPECTING CHILD ABUSE

NOTICE

All persons making use of this consolidation are reminded that it has no legislative sanction; that the amendments have been embodied only for convenience of reference; and that the original Regulations should be consulted for all purposes of interpreting and applying the law.

Printed by the Queen's Printer for the Province of Manitoba

MANITOBA

RÈGLEMENT DU MANITOBA 60/86

RÈGLEMENT PRIS EN APPLICATION DE LA LOI SUR LES SERVICES À L'ENFANT ET À FAMILLE CONCERNANT LES MAUVAIS TRAITEMENTS SUBIS PAR DES ENFANTS

AVERTISSEMENT

La présente codification ne vise qu'à faciliter la consultation. Il y a lieu de se reporter aux textes authentiques lorsqu'il s'agit d'interpréter ou d'appliquer la loi.

Imprimée par l'Imprimeur de la Reine de la Province du Manitoba

MANITOBA REGULATION 60/86

BEING A REGULATION UNDER THE CHILD AND FAMILY SERVICES ACT RESPECTING CHILD ABUSE

(Filed March 7, 1986)

1 In this regulation

"Act" means The Child and Family Services Act;

"registry" means a record maintained by the director for registering information of suspected and confirmed child abuse.

2 Where the director receives information of an alleged or suspected case of child abuse and where an agency is not already informed with respect to that case, the director shall, without delay, require the agency in the area where the child is, to investigate the allegation and to proceed under Part III of the Act and this regulation.

3(1) Where an agency

(a) is directed under section 2; or

(b) receives information of an alleged or suspected case of child abuse; the agency shall, without delay, initiate an investigation of the matter, and if the circumstances warrant action to protect the child, shall carry out a full investigation and take such other actions as may be necessary in accordance with Part III and this regulation to ensure the protection of the child.

3(2) On receipt of a report or referral of suspected or alleged abuse which may have resulted in physical injury to or sexual exploitation of a child, an agency shall

(a) where there is a preliminary opinion that serious physical injury or sexual exploitation of the child has occurred, immediately arrange for a medical examination of the child allegedly abused and, where believed necessary, any other child in the family, by a duly qualified medical practitioner or at a medical child abuse facility;

(b) consult immediately with the local police as to the particulars of the case; and

(c) continue the confidential and mutual sharing of all relevant information with the police, medical and hospital professionals, and other agencies or professionals involved in the investigation and treatment of the case, to ensure the best course of action is taken.

4(1) Every agency that receives information about the suspected or alleged abuse of a child, including a child in the care of the agency, shall report the information to the director in a manner and form required by the director.

4(2) The agency which reported the alleged abuse incident to the director shall, in accordance with standards and procedures established for the operation of the provincial child abuse registry, also report to the director any corrections of, or pertinent addition to, the original information, which later became known in the course of further investigation or any other action.

5 The director shall maintain a confidential record of all the information received from the agency in order to

(a) alert agencies to previous incidents of alleged or confirmed cases of abuse recorded with respect to a child; or

(b) provide access to informaiton to facilitate a current investigation; or

(c) monitor services to ensure they are carried out in accordance with provincial standards and guidelines; or

(d) provide access to the data necessary for program planning and analysis to improve services and to assist in the study of and research into abuse.

6 Manitoba Regulation 150/79 is hereby repealed.

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4.0

MANITOBA GUIDELINES ON IDENTIFYING AND REPORTING CHILD ABUSE

Child abuse is a grave, growing and often self-perpetuating problem which knows no social barriers. Violence in the family is often physically and always emotionally devastating, not only to the child but to the entire family.

Its identification, treatment and prevention require the close collaboration of child caring agencies, law enforcement units, health care workers, educators, and all whose concerns, whether professional or non-professional, touch upon and affect the lives of children.

Expressing a strong commitment to assistuin the provision of a speedy, effective and broad range of services to children and families at risk, the Ministers of Community Services, Health, Education and the Attorney-General jointly issue these Guidelines on Child Abuse. Their purpose is to provide a procedural and legal framework for the investigation, detection and management of child abuse cases to the growing community of professionals and lay persons providing services to children and their families.

Definitions:

The following definitions apply for the purpose of these guidelines, which are primarily intended for child abuse within the family:

1. **"Abuse"** means an act or omission by the parent, guardian or person in whose care a child is which results in:

   i) physical injury to the child,

ii) emotional disability of a permanent nature in the child or is likely to result in such a disability, or

iii) sexual exploitation of the child with or without the child's consent.

2. "Physical abuse" means an act or omission by the parent, guardian or person in charge of the child, which act or omission results in harm to the child. It includes, but is not necessarily restricted to: physical beating and failure to provide reasonable protection for the child from physical harm.

3. "Sexual abuse" means any exploitation of a child whether consensual or not for the sexual gratification of a parent or person in charge of a child and includes, but is not necessarily restricted to: sexual molestation, sexual assault, and the exploitation of the child for purposes of pornography or prostitution.

Sexual abuse includes "incest". Incest is a crime under the Criminal Code of Canada. Therefore, the involvement and participation of the local police force is essential in all incest investigations.

Sexual activity between children may constitute sexual abuse if the differences in ages between the children is so significant that the older is clearly taking sexual advantage of the younger.

4. "Emotional abuse" means acts or omissions on the part of the parent or the person in charge of a child, which acts or omissions include but are not restricted to:

a) any unwillingness or inability to provide appropriate care, control, affection or stimulation for a child;

b) making inappropriate demands upon a child;

c) exposing a child to frequent family violence tending to produce permanent or long-term emotional disability, including:

i) non-organic failure to thrive;
ii) developmental retardation;
iii) serious anxiety, depression or withdrawal;
iv) serious behavioural disturbances.

Emotional abuse remains a major concern but does not require police intervention. Nevertheless, a multi-disciplinary team approach may be essential in certain emotional abuse cases.

5. **"A person in charge of a child"** means a person in a position of trust who is responsible for a child's welfare and includes a person within the context of a family relationship or foster parent.

6. **"Third party assault"** means abuse which occurs outside the family and technically does not fall within the guidelines but, nevertheless, is subject to:

a) police investigation,

b) referral to an appropriate agency for service,

c) reporting of the incident to the central abuse registry.

7. **"Child"** means a person under the age of majority. (In Manitoba the age of majority is 18).

8. "Agency" means:

i) a child and family services agency incorporated under this Act,

ii) a regional office of the department of the executive government of the province of which the minister charged with the administration of this Act is the chief administrative officer; and

iii) a corporation created pursuant to an agreement under subsection 6(14).

9. "Medical child abuse unit" means professionals within a hospital setting who are specifically responsible for handling suspected or alleged child abuse cases.

It is expected that the management of child abuse cases within a hospital setting will be from an inter-disciplinary perspective and that a hospital child abuse team will therefore be a member of the regional or community team/committee which includes the local child and family services agency, law enforcement and medical/health personnel.

Guidelines:

1. Any person suspecting child abuse shall report it immediately to a child and family services agency, the police or a medical child abuse unit.

2. (a) Where a report of suspected or alleged child abuse is received by a child and family services agency, the agency will consult immediately with the local police force;

(b) Where a report of suspected or alleged child abuse is received by the local police force, the police will consult immediately with the appropriate child and family services agency;

(c) Where a report of suspected or alleged child abuse is received by a hospital or other medical health centre with a recognized medical child abuse unit, the hospital/centre will report the incident to the appropriate child and family services agency and local police force immediately, and;

(d) Where a report of suspected or alleged child abuse is received by a hospital or medical health centre without a recognized medical child abuse unit, the hospital/centre will immediately report the incident to the appropriate child and family services agency, the local police force or the nearest recognized medical child abuse centre.

3. To ensure that the best course of action is taken in every case, there shall be a mutual sharing of all relevant information by the agencies and professionals involved in the investigation and treatment process.

4. The protection of the child is the responsibility of all persons involved. The child and family services agency, however, has the mandate to protect the child as provided for in the Child and Family Services Act (Manitoba), with guidance from the professional team members where a recognized medical child abuse unit exists.

5. Every child and family services agency which receives information about the suspected or alleged abuse of a child, including a child in the care of the agency, shall report the information to the director of child and family services, as required by the Child and Family Services Act (Manitoba) in the manner and form set out in the regulations.

Notwithstanding the mandatory requirement for an agency to report, any other professional should report a child abuse incident in the same manner and form to the director of child and family services. Failure by professionals to report may be subject to professional and/or legal action.

6. The office of the director of child and family services shall issue statistical and descriptive data, as extracted from agency reports of suspected or alleged child abuse. A regular review of all abused children reported to the director shall be required in the manner and form set out by the director. This will ensure the sound disposition of each case, the continuity of service, and ultimately the safety of all abused children or children at risk in the province.

7. Each child and family services agency should inform the reporter of suspected or alleged abuse of action taken on the report at the earliest appropriate time.

8. In all cases of physical or sexual abuse, the crown attorney shall determine whether to lay charges upon completion of the preliminary investigation by the child abuse team.

   In circumstances where the seriousness and urgency of the case dictates, charges will be laid without prior consultation. It is expected, however, that subsequently there will be ongoing consultation from the initial reporting to the final disposition.

It is our hope that this multidisciplinary team appoach will ensure that the needs of abused children are met, that their rights are protected and that, wherever possible, families can be kept together with the continued support of all involved.

Original dated at the City of Winnipeg, in the Province of Manitoba, on the 13th day of April, 1984.

Revisions dated at the City of Winnipeg, in the Province of Manitoba, this 1st day of September, 1986.

_____

Minister of Community Services

_____

Attorney General

_____

Minister of Health

_____

Minister of Education

Addendum #1

REPORT ON PHYSICALLY OR SEXUALLY ABUSED CHILD

Name of Child: _____ Region/Agency _____
(first name) (middle name) (Surname)

Birthdate: Year _____, Month _____, Day _____

Age: _____ Male: _____ Female: _____

Name of Legal Guardian of Child: _____

Address: _____

Name of Suspected Abuser (include alias): _____

Address: _____

Date alleged abuse occurred: Year _____, Month _____, Day _____

Where alleged abuse occurred: _____
(City, town, municipality, etc.)

Date of referral to Region/Agency: Year _____, Month _____, Day _____

Date report prepared: Year _____, Month _____, Day _____

TRAUMA: (Mark by X only one, the most serious)

Death	_____
Fracture(s)	_____
Burns	_____
Bruises & Welts	_____
Rape	_____
Sexual Assault	_____
Other (describe)	_____
	_____

SUSPECTED ABUSER: (Mark by X)

		Age(s)	Sex
Father			
Mother			
Both Parents			
Common-Law Spouse			
Unknown			
Other (specify)			

DISPOSITION OF CHILD: (Mark by X)

Non-Ward Care	_____
Temporary Guardianship	_____
Permanent Guardianship	_____
Investigation Only	_____
Further Investigation Pending	_____
Child's Home under Agency Supervision	_____
Deceased	_____

DISPOSITION OF ALLEGED ABUSER(s): (Mark by X one only)

Receiving agency therapeutic services _____

Criminal Court Proceeding

NOTE: Where the final disposition of the case (and action taken) is not available at the time of reporting, provide it later by memo.

COMMENTS: (Use other side if necessary)

_____
(Signature of reporter)

This report is to be submitted in accordance with Subsection 36 6 of The Child Welfare Act to:

THE DIRECTOR OF CHILD WELFARE, Child & Family Support, Department of Community Services, 2nd floor - 114 Garry Street, Winnipeg R3C 1G1

ADDENDUM #2

Proposed Registration Form for Child-Victim Registry

DRAFT

Child-Victim

Name of child-victim _____

Current Address _____

Birthdate of child-victim _____

Name of mother/guardian of child-victim _____

Current Address _____

Name of father/guardian of child-victim _____

Current Address _____

Names of siblings/birthdates:

Significant others in household:

Type of case - intra-familial ( )
- known to family ( )
- position of trust ( )
- third party assault ( )
- unknown assailant ( )

Nature of abuse:
- confirmed ( ) physical ( )
sexual ( )
emotional ( )
- suspected ( ) physical ( )
Sexual ( )

Identity of Abuser: (see definitions 2.21(3) and complete as required)

(1) confirmed (admitted/convicted)

Name _____ Birthdate _____

Address _____

Relationship to child-victim _____

(2) Suspected sexual abuser

Name _____ Birthdate _____

Address _____

Relationship to child-victim _____

Child and Family Service Agency of Registration _____

Name of Investigating Social Worker _____

Name of Supervisor/Abuse Coordinator _____

Date submitted for Registration _____

DRAFT

ADDENDUM #3

Proposed Registration Form for the Child-Abuser Registry

(1) Identifying Information

(a) Name of Confirmed (physical, sexual or emotional) Abuser

_____

Current Address _____

Birthdate _____

Relationship to child-victim _____

(b) Name of Suspected (Sexual) Abuser

_____

Current Address _____

Birthdate _____

Relationship to child-victim _____

(2) Nature of abuse [Definition 2.21(4)]

(a) * confirmed ( ) physical ( )
emotional ( )
sexual ( )

(b) suspected ( ) sexual ( )

(3) Current Status [Definition 2.21(4)]

1. convicted ( )
2. admitted ( )
3. charged ( ) [To be completed only if police statements indicate an admission of being the abuser]
4. Suspected (sexual) abuse ( )

Child and Family Service Agency of Registration _____

Name of Investigating Social Worker _____

Name of Supervisor/Abuse Coordinator _____

Date submitted for Registration _____

DRAFT

ADDENDUM #4

Proposed Release of Information Form

The "Release of Information regarding Child Abuse" whether as a separate form or as part of a more general "Release" will contain the following:

Name

Maiden Name (if applicable)

Birthdate

Address

Previous Address

Statement of understanding of the nature of the consent

Statement of Consent

FOOTNOTES

[1]Douglas J. Besharov, "Putting Central Registers to Work Using Modern Management Information Systems to Improve Child Protective Services," Chicago-Kent Law Review 54(1978):687-752.

[2]Ibid.

[3]Ibid.

[4]Ibid.

[5]Jeffrey G. Reitz, Child Abuse Registers: A Review of the Literature (Ontario Ministery of Community and Social Services, March, 1984)

[6]Robin F. Badgley (chairperson), Sexual Offences Against Children: Report of the Committee on Sexual Offences Against Children and Youths, (Ottawa: Canadian Government Publishing Centre, 1984), I:80-82.

[7]M. Baker and B. Plant Reynolds, Current Issues System: Child Abuse (Ottawa: Political and Social Affairs Division, Research Branch, Library of Parliament, November 20, 1984)

[8]Manitoba Advisory Council on the Status of Women: The "System's" Response to Victims of Incest in Manitoba (M.A.C.S.O.W., January, 1985)

[9]Douglas J. Besharov, "Putting Central Registers to Work," Children Today (September/October 1977):9-13.

[10]Manitoba Department of Community Services and Corrections. Child Abuse, Ninth Edition (Child and Family Services, August, 1982).

[11]Gordon S. Earle: Ombudsman Manitoba Aug. 29/85.

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[12]Manitoba Advisory Council on the Status of Women: The "System's" Response to Victims of Incest in Manitoba (M.A.C.S.O.W., January, 1985)

[13]Sam Morreale, Ontario Centre for the Prevention of Child Abuse. Department of Community and Social Services.

[14]Ibid.

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